No. 17057

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

KIT MANUFACTURING COMPANY, RESPONDENT

On Petition for Enforcement of An Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

AUTHORITIES CITED

Cases:

Cases—Continued

Statute:

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

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KIT MANUFACTURING COMPANY, RESPONDENT

On Petition for Enforcement of An Order of the National Labor Relations Board

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This proceeding is before the Court on petition of the National Labor Relations Board for enforcement of its order issued against respondent Kit Manufacturing Company on April 27, 1960, pursuant to Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 72 Stat. 945, 29 U.S.C., Secs. 151, *et seq.*).[1] The Board's decision

[1] The relevant statutory provisions of the Act are printed in Appendix A *infra*, p. 18.

and order (R. 45-50),[2] are reported at 127 NLRB No. 62. This court has jurisdiction under Section 10 (e) of the Act, the unfair labor practices having occurred at respondent's plant in Caldwell, Idaho, where respondent is engaged in the manufacture and interstate sale of trailers and mobile homes (R. 11-12; 49).

STATEMENT OF THE CASE

I. The Board's findings of fact

The Board found that respondent violated Section 8 (a) (3) and (1) of the Act by discharging employee Elsworth Jordon, because of his union activities. The Board also found that respondent violated Section 8 (a) (1) by threatening employees with economic reprisals if they engaged in union activities or voted for a union, and by promising and instituting benefits for employees in return for rejecting a union. The subsidiary facts upon which the Board's findings rest are summarized as follows:

A. *Background*

Shortly after the Company began operations in November 1958, several unions, including the United Steelworkers of America, AFL-CIO (herein called the Union), commenced organizing its employees (R. 12; 86-87, 96). Pursuant to a representation petition filed by the Union on January 19, 1959, the

[2] References to portions of the printed record are designated "R". Whenever a semicolon appears, the references preceding it are to the Board's findings; those following are to the supporting evidence.

Board conducted an election among the employees on June 4, 1959, with indecisive results which required the holding of a run-off election on June 24, 1959 (R. 12; 96, 89, 91-93). On the objection that respondent had illegally interfered with the runoff election, the Board, subsequent to the hearing herein, set the election aside and ordered that a second runoff election be held (R. 12-13; 96).

B. *The unfair labor practices*

1. *The Company interferes with the organizational efforts*

When employee Elsworth Jordon reported for his first day at work on February 2, 1959, Plant Manager Skinner warned him that he would be "blackballed" if he "had anything to do with any Union" (R. 16; 60-61). Skinner then stated that "he didn't want [Jordon] to attend . . . union meetings" and that, although he was not directing Jordon to oppose a union, "it would help if [Jordon] talked against the Unions." (R. 16; 61).

During February and March 1959, Plant Manager Skinner held a series of employee meetings in which he expressed respondent's opposition to unions (R. 16-17; 99, 119). In a March 1959 meeting, Skinner summoned the entire finishing crew into his office and told them that "if the Union [came] in, [respondent's plant] would be closed and nobody would have a job" (R. 16; 80-81, 83-84). Skinner further stated to the assembled crew, which included female employees, that "if the Union [came] in . . . he would take and dismiss the women . . . that he couldn't afford to pay women Union scale for a man's work" (R. 16; 81, 83).

The Union usually met in a private room adjoining a local cafe known as the Stringbusters Lounge (R. 15; 76-77, 84, 58, 59-60, 63, 82). Plant Manager Skinner frequented the same cafe and he knew that the Union's meetings were being conducted on the premises (R. 30; 82-83, 84, 109, 118, 58, 60, 63-64, 77, 81, 87-88). After the meetings ended, he habitually engaged employees in disputes as to the merits of unions (*Ibid.*).

On March 17, 1959, as employee Donald Jessen left a Union meeting he encountered Plant Manager Skinner in the public portion of the Stringbusters Lounge (R. 17; 84, 76, 63). Skinner asked Jessen why he favored a union and when Jessen explained that he believed a union would result in more favorable wages and working conditions for employees, Skinner replied, "If you'll string along with me, I can do more for you than any union . . . I know your happy making $1.45 an hour . . . but if you string along out here with me and help us, we'll help you . . . You won't be making $1.45, you'll be beating that" (*Ibid.*).

2. *The Company interferes with the union elections*

A week before the union election scheduled for June 4, 1959, Plant Manager Skinner assembled twelve employees in his office, instructed them not to attend union meetings, and repeated the threat to discharge the female employees if the Union forced the Company to "pay [them] men's wages" (R. 17-18; 89-90). He further stated "that he would know who voted" for the union and that "he would let

[the employees] go . . . before he would pay Union wages" (R. 18; 90). Skinner also mentioned for the first time the possibility of instituting a group insurance plan for employees, stating that respondent "had been trying to get insurance for [employees] at the plant here . . . it would probably be a year but he would work on it and see if he couldn't get it sooner" (R. 18; 90, 92).

On June 3, 1959, one day before the first election, Plant Manager Skinner spoke to a group of nine or ten employees whom he had ordered to report to his office (R. 18; 93-94, 90-91). Skinner advised the group that "the election was coming up and there had been talk about Unions, different Unions, and they promised [employees] pay raises . . . and various other inducements" but that "he could tell [the employees] here and now that no outside bargaining agents could dictate . . . what the company would pay or do . . ." (R. 18-10; 93-94). Skinner also remarked that the Company "would not tolerate a Union and . . . would dismiss the entire crew if they went Union and start with a new crew" (R. 19; 96, 94). He forewarned the employees that "[i]f you vote Union, you can be dismissed from the company for voting Union." (R. 19; 94). Skinner again referred to the insurance plan for employees and reiterated that the Company "couldn't afford to pay for the plan in less than a year" (*Ibid.*).

Three weeks later, on the morning of the first runoff election, Plant Manager Skinner assembled fifteen employees in his office and announced that the Company was installing the aforementioned insur-

ance plan immediately (R. 19; 91-92, 100, 120, *infra*, p. 19).[3] After he explained the plan and extolled its advantages at length, Skinner proceeded to discuss the impending run-off election (R. 19; *infra*, pp. 19-20). He urged the employees to "vote for the plant and not for the Unions" and to "stay with the plant, and things would be all right (R. 19; *infra*, p. 20).

3. *The discharge of Jordon*

Jordon had been an active Union adherent at his previous job in a nearby plant which was also being organized (R. 15, 29; 56-57). On February 1, 1959, shortly after he had resigned his prior position, Jordon met Plant Manager Skinner in the public part of the Stringbusters Lounge following a Union meeting which he had attended (R. 15; 57-58). At that time, Skinner offered Jordon a job as a maintenance man and promised him a 30 cent an hour increase in pay in three weeks (R. 29; 60-61, 103). When Jordon accepted, Skinner told him to report for work the next morning (*ibid.*). As already noted, *supra*, p. 3, upon Jordan's arrival at work on February 2, 1959, Skinner warned him that if he had anything to do with the Union he would be "blackballed". Skinner, at the same time, specifically directed Jordon not to attend any Union meetings (R. 29-30; 61).

For six weeks Jordon adhered to Skinner's instructions and did not attend any Union meetings. When, however, he pressed Skinner for the promised wage

[3] Portions of the transcript of testimony inadvertently omitted from the printed record are set forth in full in Appendix B, *infra*, pp. 19-21.

increase and was refused, early in March, 1959, Jordon's interest in the Union revived (R. 30; 61-62, 76, 81). Thereafter, he attended three successive weekly Union meetings on March 17, 24, and 31, 1959 (R. 30; 62-64, 81, 76). Skinner was present in the Stringbusters Lounge on the night of the March 17 meeting and he spoke to Jordon "after the meeting broke up" (R. 30; 62-64, 81). Jordon also saw Skinner in the Stringbusters Lounge following the March 31 Union meeting but they did not speak to each other on that occasion (R. 30; 64).

Shortly after Jordon was hired, his immediate superior, Forman Lang, informed him that he was progressing satisfactorily, and Plant Manager Skinner also advised him that he "was doing a pretty good job" and to "keep it up" (R. 33; 64-65).

On the morning of April 1, 1959, in accordance with respondent's instructions to report intended absences, Jordon telephoned the plant and obtained the permission of his immediate supervisor, Foreman Lang, to remain at home to treat a foot infection (R. 31; 66, 73-74, 77, 64). Foreman Lang notified Plant Manager Skinner of Jordon's contemplated absence (R. 31; 66, 73, 115). The next day, April 2, 1959, his foot condition unimproved, Jordon visited a doctor; however, he again advised his superiors that he would be unable to be at work (R. 31; 67, 73, 78). Later that day, Jordon saw an advertisement in the local newspaper indicating that the Company was seeking another man to replace him (R. 32; 68-69, 134, 112-114). When Jordon appeared at the plant the same day to question Company officials about

the advertisement, Plant Manager Skinner informed him that he had been discharged (R. 32; 69-71, 78, 111-112). Previously, Jordon had never been warned about the possibility of his being discharged, except for Skinner's threat, *supra*, p. 3, nor was his work ever criticized (R. 33; 65, 118).

II. The Board's Conclusions of Law and Order [4]

On the foregoing facts, the Board found that by threatening employees with discharge if they engaged in union activities or voted in favor of a union, by threatening to shut down its plant and replace the entire crew if the employees organized, by threatening to dismiss the female employees and substitute male employees should the employees accept a union, by promising an employee a pay increase as a reward for rejecting a union and by precipitously installing the insurance plan on the day of and prior to the run-off election for the purpose of inducing the employees to vote against a union in the election, respondent interfered with, restrained and coerced the employees in the exercise of their rights under Section 7, thereby violating Section 8 (a) (1) of the Act (R. 20-22, 45-46). The Board also concluded that respondent violated Section 8 (a) (3) and (1)

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[4] Upon the motion of the General Counsel at the hearing, the Trial Examiner, with the Board's subsequent approval, dismissed the complaint with respect to the non-litigated discharge of three other employees who failed to appear at the hearing (R. 48, 11, n. 1; 5, 97). The Board also concluded that respondent had not discriminatorily discharged a fourth employee (R. 48, 15).

of the Act by discharging Jordon because of his union activities (R. 38, 45-46).[5] The Board's reasons for rejecting respondent's claim that it discharged Jordon because he was an unsatisfactory employee in several respects are discussed at pp. 14-16, *infra*.

The Board's order (R. 46-48) requires respondent to cease and desist from the unfair labor practices found and from in any other manner interfering with, restraining, or coercing the employees in the exercise of their rights under Section 7 of the Act. Affirmatively, the order directs respondent to reinstate Jordon with back pay and to post appropriate notices.

ARGUMENT

I. Substantial Evidence Supports the Board's Findings That Respondent Interfered With, Restrained and Coerced Its Employees In the Exercise of Their Organizational Rights In Violation of Section 8 (a) (1) of the Act

As set forth above, pp. 3-6, the record establishes that respondent engaged in vigorous efforts to defeat the unionizing of its employees. Through its plant manager, Skinner, respondent convened captive meetings of employees in which it ordered the employees to abandon their union activities under a threat of discharge, threatened to close its plant if the employees unionized, threatened to replace female employees should a union be accepted, and on two occasions immediately preceeding a representation elec-

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[5] The Board found that Jordan's discharge was not violative of Section 8 (a) (4) of the Act (R. 39, 45-46).

tion threatened to discharge those employees voting for a union. In addition, respondent warned an employee on his first day of work not to engage in union activities or he would be "blackballed", and promised another employee a pay increase for rejecting the Union. Finally, respondent strategically timed the announcement of the insurance plan for the employees to coincide with the critical run-off election, and at the same time urged the employees to vote against a union. The installing of the plan on the very day of the run-off election can be explained only as a last minute improvement in working conditions, designed to frustrate the employees' organizing efforts.[6] That the use of such tactics limits employees' organizational rights and, consequently, violates Section 8 (a) (1) of the Act, is too well settled to require discussion.[7]

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[6] Respondent's claim that it had been working on the plan since November 1958, cannot be reconciled with the fact that twice shortly before the election employees were advised that such a plan was not in the offing for at least one year, and no asserted urgency compelled respondent to institute the plan in advance of the opening of the polls on the day of the election (R. 21-22; 90, 92, 100-101).

[7] See, for example, *Medo Photo Corp.* v. *N. L. R. B.*, 321 U. S. 678, 683-684; *N. L. R. B.* v. *Polson Logging Company*, 136 F. 2d 314 (C. A. 9); *N. L. R. B.* v. *Lettie Lee, Inc.*, 140 F. 2d 243, 245-247 (C. A. 9); *N. L. R. B.* v. *Grand Central Aircraft Co., Inc.*, 103 NLRB 1114, 1153-1155, enforced 216 F. 2d 572 (C. A. 9); *N. L. R. B.* v. *Radcliffe*, 211 F. 2d 309, 310-311, 316 (C. A. 9), certiorari denied, 348 U. S. 833; *N. L. R. B.* v. *Howell Chevrolet Co.*, 204 F. 2d 79, 83-85 (C. A. 9), affirmed, 346 U. S. 482; *N. L. R. B.* v. *Pacific Moulded Products Co.*, 206 F. 2d 409 (C. A. 9), certiorari denied, 346 U. S. 938; *N. L. R. B.* v. *Parma Water Lifter*

The Board's determination that respondent violated Section 8 (a) (1) of the Act rests on facts, found by the Trial Examiner and adopted by the Board, which respondent has substantially failed to deny or refute. Respondent suggests that Skinner's coercive statements were prompted by personal convictions and honest fears that the advent of a union would increase costs and might result in a plant shut down. Assuming that this was so, the Board could nevertheless properly conclude, especially in view of the manner and extent of respondent's unlawful interference during the same period, that Skinner's statements were nevertheless threats rather than mere expressions of personal views or economic predictions. *N. L. R. B.* v. *New England Upholstery Co.*, 268 F. 2d 590, 592 (C. A. 1). Compare *N. L. R. B.* v. *Hoppes Mfg. Co.*, 170 F. 2d 962, 964 (C. A. 6).

II. Substantial Evidence On the Record As a Whole Supports the Board's Finding That Respondent Discharged Employee Jordon In Violation of Section 8 (a) (3) and (1) of the Act

As we have already shown, respondent, through its plant manager, resorted to an assortment of illegal measures, including threats of discharge, in order to defeat a union among its employees. Indeed, its anti-union bent was levelled directly at Jordon on the very

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Co., 211 F. 2d 258, 261-263 (C. A. 9), certiorari denied, 348 U. S. 829; *N. L. R. B.* v. *W. T. Grant Co.*, 199 F. 2d 711, 712 (C. A. 9), certiorari denied, 344 U. S. 928; *N. L. R. B.* v. *West Coast Casket Co., Inc.*, 205 F. 2d 902, 904-905 (C. A. 9); *N. L. R. B.* v. *State Center Warehouse, Etc.*, 193 F. 2d 156 (C. A. 9).

first day of his employment. At the outset, Plant Manager Skinner candidly warned Jordon that if he had anything at all to do with a union he would be "blackballed" from the Company. Skinner then gave Jordon explicit orders not to attend Union meetings. The subsequent events confirm that respondent implemented Skinner's "blackball" threat when it discharged Jordon.

Although Jordon had solicited for the Union at his prior job (R. 15; 57), Skinner's promise of a pay increase induced him to suspend his support of the Union during his first six weeks of employment. When Skinner denied his request for the raise, Jordon again resumed his union activities. He attended three successive Union meetings on March 17, 24, and 31, 1959, and respondent's retaliative action followed soon after. About March 1, 1959, even before Jordon had in fact attended any meetings, Plant Manager Skinner, apparently fearing that Jordon would renew his interest in the Union, falsely accused Jordon of going to its meetings (R. 30; 62).

The record shows, and respondent does not deny, that it was immediately apprised of Jordon's having reactivated his allegiance to the Union. Thus, after the meeting on the night of March 17, Jordon encountered and talked to Plant Manager Skinner in the Stringbusters Lounge. Similarly, following the March 31 meeting, Jordon saw Skinner at the cafe. Not only did Skinner concede at the hearing that on at least one occasion during the same period he was in the Stringbusters Lounge and was aware that a Union meeting was then in progress (R. 118-119),

but the record also shows that he habitually stationed himself in the public part of the cafe, confronted employees coming from the Union's meeting and attempted to influence them to reject the Union (see, *supra*, p. 4). One such episode occurred after the March 17 meeting when Skinner accosted employee Jessen departing from the identical Union meeting that Jordon had attended. On this occasion, Skinner tried to entice Jessen to forego his support of the Union with the lure of a pay increase as a reward.[8] In addition, Skinner first met Jordon and offered him a position immediately after Jordon's attendance at a Union meeting at the Stringbusters Lounge, and Skinner admitted that he "might have expressed [his] views and concern with the Union for management" in the ensuing exchange (R. 15; 98).

The foregoing incidents take on even more striking clarity when placed in their setting of respondent's opposition to the Union, for also during February and March, 1959, Skinner had been conducting meetings among the employees at the plant in which they were subjected to open threats of dismissal should they organize, *supra*, p. 3. See *N.L.R.B.* v. *Chicago Apparatus Company*, 116 F.2d 753, 759 (C.A. 7).

Significantly, respondent had never seen fit to warn Jordon about the possibility of his dismissal, except for Skinner's initial threat to take punitive action should he engage in union activities.[9] In fact, Jordon

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[8] As set forth above, pp. 4, 8, the Board found that this incident violated Section 8(a)(1) of the Act.

[9] At the hearing, Skinner admitted that the single official reprimand Jordan had received for smoking and loitering

had been commended for doing a satisfactory job, not only by his immediate supervisor but also by Skinner himself.

The above circumstances, we submit, amply support the Board's finding that Jordon's discharge was discriminatorily motivated.

Moreover, the Board's finding of discriminatory motivation here, is further buttressed by respondent's attempts to justify its action, for "the explanation of the discharge offered by respondent fails to stand under scrutiny." *N.L.R.B.* v. *Dant*, 207 F. 2d 165, 167 (C.A. 9).

Thus, respondent claimed before the Board that Jordon's attendance was irregular in that he frequently had unexcused half-day absences. But Jordon's credited testimony shows that he was absent just 2 half days in March, when the frequent absences were alleged to have occurred, once to borrow money to pay a bill, and once to take his child to a doctor, and both times his superiors knew of and had approved the absences (R. 33; 65-66). Jordon's "change of status" form, introduced into evidence by respondent, corroborates Jordon's testimony, for it shows that only twice during March did Jordon's weekly hours fall below the normal 40 hour work week (R. 33; 105, 110, 137). Nor had Jordan ever been criticized for poor attendance or unexcused absences. Similarly, Jordon complied with company instructions regarding the reporting of intended ab-

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played no part in the decision to discharge him (R. 33; 117, 74, 138).

sences on both April 1 and 2, when he was absent for reasons of health (R. 31, 37; 64, 66, 67, 73-74, 77, 115, 105).

Respondent also attempted to justify Jordon's discharge on the ground that he was insubordinate and uncooperative on one occasion in March, allegedly leaving the plant without permission although an urgent job assignment was not completed. However, the Trial Examiner, who had an opportunity to evaluate the "significance of the carriage, behavior, bearing, manner and appearances" of witnesses discredited Plant Manager's Skinner's and Foreman Brown's testimony relating to this incident. *N.L.R.B.* v. *Howell Chevrolet Co.*, 204 F. 2d 79, 86 (C.A. 9). The Examiner believed the testimony of Jordon and Taber, a fellow employee. They testified that Jordon had not only completed his phase of the assignment, but had also requested and obtained from Foreman Brown express permission to leave the plant for the day (R. 34-35; 126-128, 124-125). Other evidence in the record supports the reasonableness of the Trial Examiner's credibility resolution in this respect, which was adopted by the Board. Thus, respondent did not issue any written correction notice covering the matter, nor did it orally reprimand Jordon for this alleged major dereliction of duty, although Jordon remained in respondent's employ for another two weeks thereafter. And, although the "change of status" form purportedly sets forth the moving reasons for Jordon's dismissal, and is painstakingly precise with respect to his alleged bad attendance record, the document makes no reference at all to this incident (R.

137). Although respondent contended that the special job was urgent, there is no evidence that it attempted to reach Jordon who lived just 5 blocks from the plant after his asserted premature departure. Finally, respondent's contention that this March incident was one of the reasons for Jordon's discharge is in conflict with Skinner's testimony that he had made no decision to terminate Jordon as late as April 2.

Respondent's assertion before the Board that Jordon was not fired, but quit, is without record support. Jordon's credible account of the events after he arrived at the plant to question Skinner about the newspaper advertisement (*supra*, pp. 7-8) compels the conclusion that he did not quit, but was discharged. Cf. *N.L.R.B.* v. *Cement Masons Local 555*, 225 F. 2d 168, 172 (C.A. 9). Further demonstrating the correctness of the Board's finding in this respect are (1) Skinner's vacillating testimony in regard to the events; at one point he testified to the effect that Jordon quit, and at another that he was discharged (R. 104, 109, 111-112, 116-117, *infra*, pp. 20-21), (2) the fact that the "change of status" form states that Jordon was terminated, and sets forth the reasons, and (3) Skinner's specific admission that he decided to discharge Jordon "immediately after he was hired when [he] discovered that [Jordon] was not qualified as a maintenance man" (R. 37; 104, 109).

In the light of all these facts, we submit that the Board was fully justified in rejecting respondent's explanations for Jordon's discharge, and properly

concluded that Jordon was terminated when he "disobeyed Respondent's instructions at the time of his hiring to refrain from union activities . . . "and" proceeded to attend a union meeting, and was observed on the scene by Skinner" (R. 38).

CONCLUSION

For the reasons stated it is respectfully submitted that a decree should issue enforcing the Board's order in full.

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January 1961

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 72 Stat. 945, 29 U.S.C., Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Unfair Labor Practices

Sec. 8.(a) It shall be an unfair labor practice for an employer—

> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> * * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

APPENDIX B

Portions of Testimony of Employee Colle McKenzie and Plant Manager Ray Skinner Adduced at the Hearing

(McKenzie—Transcript, pp. 123-125)

Q. Now at the meetings around the time of the June 24th election, did you go to one of those?
A. Yes.
Q. What day was that?
A. June 24th
Q. I see. And before the election was held?
A. Yes.
Q. How many were at these meetings?
A. There was, at the meeting I was at, there was about 15.
Q. Was that held in Mr. Skinner's office too?
A. Yes.
Q. What did he say and do there?
A. It was about insurance that he managed to have passed out papers to us on election morning, and he brought us up to talk about the insurance mainly.
Q. What did he say about the insurance?
A. He was telling us the advantages of the insurance family group and what it covered and what it didn't cover.
Q. Was this something the company was making available?
A. Yes.
Q. Did he pass out any cards on that?
A. Yes, a card for us to fill out with a name and address and how many dependents.
Q. And in addition to insurance did he talk about anything else?
A. Yes.

Q. What?
A. A little on the Union.
Q. I see, what did he mention about the Union? Did he mention the election at all?
A. Yes.

* * * *

Q. What did he say about the Union and the election?
A. He said that he felt that the plant; that the guys would go far for the plant, you know, stay with the plant, and things would be all right.
Q. Did he suggest, in any way, how you should vote in the election?
A. He said that we should vote for the plant and not for the Unions.
Q. Between the talk about the insurance and the talk about the Unions and election, how was the time in that June 24th meeting divided up?
A. You mean what time?
Q. Well, I mean what portion time of the time was devoted to talk about insurance and what proportion was devoted to talking about other things?
A. We discussed the insurance policy there, the advantage of it, for about half of the first half, and then we talked about the Unions for about a quarter of it and then the last quarter quarter was on insurance again, the points brought up on the policy and the questions brought up about it.
Q. I have no further questions.

SKINNER—Transcript, pp. 210-211)

Q. Is it your testimony that the reason he was terminated was because he came in with newspaper clipping in his hand?
A. Yes.

Q. And when he asked for an explanation of the newspaper clipping, what did you reply?
A. I told him, I believe I told him, that I was looking for another maintenance man.
Q. I see, and was there room for two maintenance men in the plant?
A. I don't know at the time whether there would have been or not.
Q. TRIAL EXAMINER BENNETT: Were you looking for a maintenance man for that job.
A. Yes, I was.
Q. (By Mr. Henderson) You were looking for a maintenance man for Jordon's job, is that right?
A. That's true.
Q. And you didn't mention to him any other job in the plant that he might have, is that correct?
A. No, I did not.

* * * *

(SKINNER—Transcript, p. 222)

Q. (by Mr. Weston) Now what was your position as of the date he brought the notice in as to whether or not he was or was not discharged?
A. I was undecided at the time when he brought the newspaper clipping in, if that's what you're referring to. However, it was practically impossible for us to continue operation in a plant of our size with the equipment we have without a maintenance man, and comeone certainly has to be on that job at all times as it cannot go unattended

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